

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

IN THE MATTER OF

**CHEVRON U.S.A., INC.;
PHILLIPS PIPE LINE COMPANY;
TEXACO PIPELINE; AND WEST
EMERALD PIPE LINE CORPORATION,**

ADMINISTRATIVE ORDER
DOCKET NUMBER
CERCLA-VI-14-91

RESPONDENTS

REGARDING THE

**SOUTH VALLEY SITE,
EDMUNDS STREET PROPERTY
ALBUQUERQUE, NEW MEXICO**

**PROCEEDING UNDER 106(a) of the
COMPREHENSIVE ENVIRONMENTAL
RESPONSE, COMPENSATION AND
LIABILITY ACT OF 1980
(42 U.S.C. 9606(a)), as
amended.**

I. JURISDICTION

1. This Order is issued to Respondent(s) by the United States Environmental Protection Agency ("EPA") under the authority vested in the President of the United States by § 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9606(a). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580 (52 Fed. Reg. 2926, January 29, 1987), and was further delegated to EPA Regional Administrators on September 13, 1987 by EPA Delegation No. 14-14-B. The authority was further redelegated to the Director of the Hazardous Waste Management Division, Region 6.

953233



II. DEFINITIONS

2. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or its implementing regulations. Whenever terms listed below are used in this Order, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

b. "Day" shall mean calendar day unless expressly stated to be a business day. "Business day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the end of the next business day.

c. "EPA" shall mean the United States Environmental Protection Agency.

d. "NMEID" shall mean the New Mexico Environmental Improvement Division.

e. "Order" shall mean this document and all attachments hereto and any such further submittal(s) required pursuant to this Order. Such further submittal(s) shall be incorporated into and become a part this Order upon final written approval by EPA of such submittal(s).

f. "Paragraph" shall mean a portion of this Order identified by an arabic numeral.

g. "Respondent" or "Respondents" shall mean those individuals or entities identified in paragraphs 12 and 13 of this Order.

h. "Section" shall mean a portion of this Order identified by a roman numeral and including one or more paragraphs.

i. "Submittal" includes all written information Respondent(s) is/are required to produce pursuant to the terms of this Order, including but not limited to correspondence, tasks, plans, reports, deliverables, specifications, and schedules.

j. "United States" shall mean the United States of America.

k. "Work" shall mean all activities Respondent(s) is/are required to perform under this Order and any attachments or incorporations hereto, and any activities required to be undertaken pursuant to this Order.

III. PARTIES BOUND

3. This Order shall apply to and be binding upon each Respondent identified in paragraphs 12 and 13 of this Order, its directors, officers, employees, agents, successors, and assigns. Each Respondent is responsible for carrying out all activities required by this Order. No change in the ownership, corporate status, or other control of any Respondent shall alter any of the Respondents' responsibilities under this Order.

4. Each Respondent shall provide a copy of this Order to any prospective owners or successors before a controlling interest in Respondent's assets, property rights, or stock is transferred to the prospective owner or successor. Each Respondent shall provide a copy of this Order to each contractor, sub-contractor, laboratory or consultant retained by it to perform any Work or activities pursuant to the terms of this Order, within five days after the effective date of this Order or on the date such services are retained, whichever date occurs later. Each Respondent shall also provide a copy of this Order to each person representing any Respondent with respect to the South Valley site or the Edmunds

Street property or the Work or activities pursuant to this Order and shall condition all contracts and subcontracts entered into hereunder upon performance of the Work or other activities in conformity with the terms of this Order.

IV. STATEMENT OF PURPOSE

5. The purpose of this Order is to protect the public health and welfare and the environment by directing Respondent(s) to undertake actions to avoid interference with the remedial action presently being conducted at the Edmunds Street portion of the South Valley Superfund site in Albuquerque, New Mexico. The Edmunds Street remedial action is required by the Record of Decision (ROD) for the site signed by the Regional Administrator, Region 6, on June 28, 1988. As set out in the ROD, the remedial action is necessary to protect the public health and welfare and the environment.

V. FINDINGS OF FACT

6. The South Valley site is located approximately 2 1/2 miles south of downtown Albuquerque and extends on the west from the Rio Grande flood plain eastward to the piedmont plain upon which the Albuquerque International Airport is located. The site is located within Sections 32 and 33, T10N, R3E N.M.P.M., and Sections 4 and 5, T9N, R3E N.M.P.M. The coordinates are approximately 35° 05'N, 106° 30'W. The Edmunds Street property portion of the South Valley

site more specifically involves a property located at 3301 Edmunds Street, a legal description of which is attached hereto as Attachment 1.

7. The South Valley site overlies a freshwater aquifer which is used by the City of Albuquerque as the major source of its drinking water supply. The City has six major water supply wells in the San Jose area in southern Albuquerque.

8. Water samples collected in 1979 and 1980 from the city of Albuquerque drinking water supply wells San Jose #3, San Jose #6, and Miles #1 indicated the presence of several toxic organic pollutants including dichloromethane, trichloromethane, tetrachloromethane, 1,1 dichloroethane, trans 1,2 dichloroethene, trichloroethene and tetrachloroethane, as identified at 40 CFR § 401.15 pursuant to the Clean Water Act § 307(a)(1), 33 U.S.C. § 1317(a)(1). Because of this contamination, all three (3) wells were removed from service by the city in 1980. Subsequent analyses did not detect the toxic pollutants in Miles #1, and it was returned to service in 1981. San Jose #3 and San Jose #6 have not been returned to service.

9. Compounds detected in soil and ground water on and beneath the Edmunds Street property include 1,1 dichloroethene, tetrachloroethane, 1,1,1-trichloroethane, trichloroethene, and 1,2

dichloroethane. These compounds are designated both as "hazardous wastes" pursuant to the Resource Conservation and Recovery Act of 1976, as amended, (RCRA) 42 U.S.C. § 6921, et seq., and 40 CFR §§ 261.11 and 261.33, and as "hazardous substances" pursuant to CERCLA § 101(14), 42 U.S.C. § 9601(14), and 40 CFR § 302.4.

10. In June 1988, the Regional Administrator, Region 6, signed a ROD which selected a remedial action for the Edmunds Street property. The selected remedy included the installation of ground water recovery wells and the pumping and treating of contaminated ground water at the Edmunds Street property.

11. The remedial action at the Edmunds Street property is being conducted pursuant to a Consent Decree entered into between the United States Environmental Protection Agency ("EPA") and UNIVAR Corporation ("Univar") and entered in the United States District Court, District of New Mexico, Civil Action No. CIV 90 - 0291SC and made effective by joint stipulation between the United States and Univar as of June 1, 1990. Under that Consent Decree, Univar agreed to undertake remedial design/remedial action (RD/RA) at the Edmunds Street property to address ground water contamination threatening the aquifer providing Albuquerque's municipal water supply.

12. Respondents Phillips Pipe Line Company, Texaco Pipeline, and West Emerald Pipe Line Corporation jointly own a petroleum transmission pipeline known as the ATA Pipeline, which passes through the South Valley Superfund site west of the Edmunds Street property and east of Broadway Road as shown in Attachment 2.

13. Respondent Chevron U.S.A., Incorporated ("Chevron") owns and operates a bulk petroleum distribution center located west northwest of the Edmunds Street property portion of the South Valley site. The location of the Chevron distribution center is shown in Attachment 2.

14. During investigations conducted by EPA in 1984 and 1987, petroleum contamination was detected in ground water monitoring well I-4, shown in Attachment 2. The analytical results of these sampling efforts are documented in the EPA report, "Remedial Investigation Report, SJ-6 Superfund Site, South Valley Area, Albuquerque, New Mexico, May 1988," ("SJ-6 Report").

15. Data collected during various investigations into the nature and extent of contamination in and around the Edmunds Street property indicates that groundwater in the upper portion of the aquifer flows from west to east.

16. Analyses of water samples taken from wells located west of or on the western portions of the Edmunds Street property during the investigation into the nature and extent of contamination in and around the property showed the presence of petroleum contaminants in those locations.

17. West Emerald reported a verified leak in the ATA pipeline and subsequent replacement of 475 feet of pipeline in 1968 near the intersection between the ATA and Chevron pipelines.

18. On May 4 and 5, 1989, during excavations conducted by Chevron of its pipeline in the area between Kirtland Air Force Base and the AEC Railroad spurs, the ATA Pipeline was encountered where it intersects the Chevron pipeline approximately 45 feet north of the AEC railroad spur. During the excavations a segment of 6 inch diameter steel pipe was exposed which ran parallel to the currently used ATA pipeline. The segment of pipe exhibited heavy corrosion and contained numerous large holes, including some of up to 2 inches in diameter.

19. From July 17 to July 21, 1989, both the abandoned section of pipeline and the currently operating ATA pipeline south of the Chevron Bulk Fuel Terminal were excavated. Samples of soil, fluid

from the abandoned pipeline, and field observations from both instrumentation and field personnel indicated the presence of significant quantities of petroleum contamination in and around the area of the abandoned pipeline. Results of this investigation were reported by Mr. Bill Olson of the Ground Water, Technical Support Section of NMEID in a Memorandum entitled "ATA Pipeline Excavation Report" dated September 21, 1989. Investigations into the Chevron and Conoco pipelines in the same location indicated no leakage from those pipelines.

20. Investigations into conditions at and around the Chevron terminal have revealed evidence of extensive petroleum contamination floating on top of ground water beneath and east of the terminal.

21. Based on information obtained as a result of the investigations referenced in paragraphs 14, 15, 16, 19, and 20 of this Order, EPA has determined that there is a petroleum plume comprised of petroleum and/or petroleum related contaminants and created by releases of petroleum from the ATA pipeline and the Chevron terminal, which plume is migrating toward the Edmunds Street property, where it eventually will commingle with the solvent plume which is the target of the Edmunds Street remediation.

22. The system for decontamination of the ground water recovered during the remediation of the Edmunds Street property is designed to remove solvent and solvent related contaminants and not those resulting from contact of ground water with petroleum or petroleum products.

23. The appearance of such petroleum contamination in quantity in ground water recovered by the Edmunds Street property remediation system will cause that system to cease to operate properly and, pursuant to the terms of the Consent Decree referenced in paragraph 11 of this Order, will result in cessation of the Edmunds Street remediation.

24. Prevention of the migration and interference of the petroleum contamination with the Edmunds Street remediation is necessary to ensure the continued operation and completion of the Edmunds Street remediation.

25. Cessation of the Edmunds Street remediation as a result of interference of petroleum contamination will result in the continued release or threat of release of hazardous substances, pollutants, or contaminants into the environment, and the continued threat to human health and welfare and the environment from such release or threat of release.

VI. CONCLUSIONS OF LAW

26. Under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), "[the] President may ... after notice to the affected State, take action including, but not limited to, issuing such orders as may be necessary to protect public health and welfare and the environment."

27. Prevention of the interference of petroleum or petroleum related contaminants with the Edmunds Street property treatment system is necessary to implement a "response" or "remedial action" as defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), and Section 101(24) of CERCLA, 42 U.S.C. § 9601(24), respectively.

VII. DETERMINATION

28. EPA has determined that petroleum or petroleum related contaminants released from the Chevron terminal and the ATA pipeline will interfere with the CERCLA remedial action at the Edmunds Street portion of the South Valley Superfund site, and that such interference may create an imminent and substantial endangerment in that it will result in the disruption of remedial activities undertaken to abate an imminent and substantial endangerment to human health and welfare and the environment at the South Valley Superfund site.

VIII. NOTICE TO THE STATE

29. Prior to issuing this Order, EPA notified the State of New Mexico through the New Mexico Environmental Improvement Division that EPA would be issuing this Order.

IX. ORDER

IT IS HEREBY ORDERED AND DIRECTED THAT:

30. Respondent(s) take any and all necessary action (e.g., diverting, halting the migration of, or removing the petroleum related contaminants) to prevent the interference of petroleum or petroleum related contaminants originating from the Chevron terminal and the ATA pipeline with the remedial action at the Edmunds Street property.

X. ENFORCEMENT AND RESERVATIONS

31. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, RCRA, and any other applicable statutes or regulations.

32. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person for any liability it may have arising out of or relating in any way to the site.

33. If a court issues an order that invalidates any provision of this Order or finds that Respondent(s) has sufficient cause not to comply with one or more provisions of this Order, Respondent(s) shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

34. EPA retains its right and power to take appropriate action, including enforcement action, to address any noncompliance by Respondent(s) with the terms of this Order, or to address any other event or occurrence upon which EPA is empowered to act under any applicable law.

35. EPA reserves authority to order further action necessary to prevent interference with the remediation of the Edmunds property and/or the South Valley site and to protect human health and welfare or the environment from releases or threatened releases of hazardous substances arising from the South Valley site.

36. Respondent(s) shall be subject to civil penalties under § 106(b) of CERCLA, 42 U.S.C. § 9606(b), of not more than \$25,000 for each day in which Respondent(s) willfully violates or fails or refuses to comply with this Order without sufficient cause.

XI. FACILITY COORDINATOR

37. Respondent(s) shall identify no later than fifteen (15) days after the effective date of this Order, a Facility Coordinator who shall be responsible for overseeing implementation of and compliance with this Order. Respondent(s) shall, by certified letter, postmarked within the specified time frame, notify EPA of the Facility Coordinator's identity, address, and telephone number at which he may be contacted. The Facility Coordinator shall coordinate and work with the EPA Remedial Project Manager (RPM) as identified in paragraph 51 of this Order. Should the identity of the Facility Coordinator change during the course of the implementation of this Order, Respondent(s) shall notify EPA of the change and the identity of the new Facility Coordinator by certified letter containing the information specified above within ten (10) days of such a change.

XII. SUBMISSIONS

38. Within ten (10) days after the effective date of this Order, Respondent(s) shall submit to EPA a written plan ("Plan") outlining steps to be taken by Respondent(s) to comply with the terms of this Order. The written plan shall be accompanied by a written schedule ("Schedule") for implementation of the Plan.

39. Upon approval of the Plan and Schedule, Respondent(s) shall implement the Plan according to the Schedule. Any violation of the approved Plan or unapproved deviation from the Schedule shall be a violation of this Order.

40. If Respondent(s) seeks to retain a construction contractor to assist in the performance of the Plan, then Respondent(s) shall submit a copy of the contractor solicitation documents to EPA not later than five (5) days after publishing the solicitation documents.

41. Within fifteen (15) days after EPA approves the Plan, Respondent(s) shall notify EPA in writing of the name, title, and qualifications of any contractor proposed to be used in implementing the Plan or otherwise carrying out Work under this Order. EPA will not approve any such contractor(s) but may disapprove of them if EPA determines that they lack the proper qualifications, experience, or training. Respondent(s) shall follow the same procedure as above for any new contractor(s) proposed to be used in implementing the Plan or otherwise carrying out Work under this Order. If EPA disapproves of the selection of any contractor, Respondent(s) shall, within five (5) days after receipt of such disapproval, select a new contractor and notify EPA

in writing of the name, title, and qualifications of the contractor. EPA will follow the same procedure specified above in reviewing this new selection.

XIII. EPA REVIEW OF SUBMISSIONS

42. After review of any submittal which is required to be submitted for review and approval pursuant to this Order, EPA may: (a) approve the submission; (b) approve the submission with modifications; or (c) disapprove the submission and direct Respondent(s) to re-submit the document after incorporating EPA's comments. As used in this Order, the terms "approval by EPA," "EPA approval," or a similar term means the action described in parts (a) or (b) of this paragraph.

43. In the event of approval or approval with modifications by EPA, Respondent(s) shall proceed to take any action required by the submittal as approved or modified by EPA. All decisions of EPA under this Order, including approvals, disapprovals, reports, workplans, specifications, schedules, and other work outputs, will be communicated to Respondent(s) by the EPA Remedial Project Manager (RPM) as identified in paragraph 51 of this Order. No formal or informal advice, guidance, directions, suggestions, or comments by anyone other than the RPM regarding any activities undertaken in satisfaction of this Order shall relieve Respondent(s) of, or add to, obligations imposed by this Order.

No informal guidance provided by the RPM is binding upon Respondent(s). The RPM will differentiate between formal and informal guidance.

44. Upon receipt of a notice of disapproval or a request for a modification, Respondent(s) shall, within ten (10) days or such longer time as specified by EPA in its notice of disapproval or request for modification, correct the deficiencies and resubmit the submittal for approval. Notwithstanding the notice of disapproval, or approval with modifications, Respondent(s) shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submittal.

45. Failure to modify any submittal in accordance with EPA comments or failure to obtain final EPA approval of any submittal under this Order shall be deemed to be a violation of this Order.

XIV. - PROGRESS REPORTS

46. In addition to the other submittals set forth in this Order, Respondent(s) shall provide monthly progress reports to EPA with respect to actions and activities undertaken pursuant to this Order. The progress reports shall be submitted on or before the fifteenth (15th) day of each month following the effective date of this Order.

XV. INFORMATION/DOCUMENT/DATA AVAILABILITY

47. Respondent(s) shall provide to EPA upon request, copies of all documents and information within Respondent's possession and/or control or that of Respondent's contractors or agents relating either to activities at the South Valley site and/or the Edmunds Street property or to the implementation of this Order, including but not limited to sampling, analysis, chain of custody record, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent(s) shall also make available to EPA for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of Work under this Order.

XVI. COMPLIANCE WITH APPLICABLE LAWS

48. All Work and activities performed by Respondent(s) pursuant to this Order shall be performed in accordance with the requirements of all applicable Federal, State, and local laws and regulations.

49. This Order is not, and shall not be construed to be, a permit issued pursuant to any Federal, state, or local statute or regulation.

XVII. DELAY IN PERFORMANCE

50. Any delay in performance of this Order that, in EPA's judgment, is not properly justified by Respondent(s) under the terms of this Section shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondent's obligations to fully perform all obligations under the terms and conditions of this Order.

51. Respondent(s) shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone to EPA's Remedial Project Manager ("RPM") for the South Valley superfund site, Tim Underwood, at the address and phone indicated in paragraph 57 of this Order, within forty eight (48) hours after Respondent(s) first knew or should have known that a delay might occur. Respondent(s) shall adopt all reasonable measures to avoid or minimize any such delay. Within five (5) business days after notifying EPA by telephone, Respondent(s) shall provide written notification fully describing the nature of the delay, any justification for delay, any reason why Respondent(s) should not be held strictly accountable for failing to comply with any relevant requirements of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that will be taken to mitigate the effect of the delay. Increased cost or expenses associated with implementation of the activities

called for in this Order is not a justification for any delay in performance.

XVIII. UNITED STATES NOT LIABLE

52. The United States, by issuance of this Order, assumes no liability for any injuries or damages to persons or property resulting from acts or omissions by Respondent(s), or its directors, officers, employees, agents, representatives, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order. Neither EPA nor the United States may be deemed to be a party to any contract entered into by Respondent(s) or its directors, officers, employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order.

XIX. EFFECTIVE DATE

53. This Order is effective ten (10) calendar days after the Order is signed by the Regional Administrator, EPA Region 6.

XX. TERMINATION AND SATISFACTION

54. This Order shall terminate when the Respondent(s) demonstrates in writing and certifies to the satisfaction of EPA that all activities undertaken pursuant to this Order, including any additional activities demanded by EPA, have been performed and EPA has approved the certification.

55. The certification shall be signed by a responsible official representing each Respondent. Each representative shall make the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate, and complete." For purposes of this Order, a responsible official is a corporate official who is in charge of a principal business function.

XXI. NOTICE OF INTENT TO COMPLY

56. Respondent(s) shall provide, not later than ten (10) days after the Regional Administrator, EPA Region 6, signs this Order, written notice to EPA stating whether it will comply with this Order. If Respondent(s) does not unequivocally commit to perform this Order, it shall be deemed to have violated this Order and to have failed or refused to comply with this Order.

XXII. OPPORTUNITY TO CONFER

57. Respondent(s) may, within five (5) days after receipt of this Order, request a conference with EPA to discuss this Order. Requests for a conference must be by telephone followed by written confirmation mailed that day to:

Mr. Marvin Benton
U.S. Environmental Protection Agency
Office of Regional Counsel (6C-WA)
1445 Ross Avenue
Dallas, Texas 75202-2733
(214) 655-2120.

or

Ms. Rachel H. Blumenfeld
U.S. Environmental Protection Agency
Office of Regional Counsel (6C-WA)
1445 Ross Avenue
Dallas, Texas 75202-2733
(214) 655-2120.

or


Mr. Timothy K. Underwood
United States Environmental Protection Agency
Oklahoma/New Mexico Superfund Enforcement Section (6H-EO)
1445 Ross Avenue
Dallas, Texas 75202-2733
(214) 655-6730

58. The purpose and scope of the conference shall be limited to issues involving the implementation of the actions required by this Order and the extent to which Respondent(s) intends to comply with this Order. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Order. It does not give Respondent(s) a right to seek review of this Order, or to seek resolution of potential liability, and no official stenographic record of the conference will be made. At any conference held pursuant to any Respondent's request, such Respondent may appear in person or by an attorney or other representative. At the conference, each such Respondent or its representative may present Respondent's analysis of the technical feasibility of this Order, or each such Respondent or its

representatives may offer evidence correcting any factual allegations made in this Order.

So Ordered, this 8 day of Oct, 1991.

BY: 

 Robert E. Layton Jr., P.E.
Regional Administrator
U.S. Environmental
Protection Agency, Region 6
1445 Ross Avenue
Dallas, Texas 75202